

**REMARKS**

Claims 5-9, 11-13, 15-26 and 54-58 are currently pending in the application . Applicant notes that claims 16-19 are currently pending and have not been rejected.

Claims 5-9, 20-26 and 54-58 have been rejected under 35 U.S.C. 102 (b) as being anticipated by Roe et al. (U.S. Patent No. 5,554,143). This ground of rejection is respectfully traversed.

"Anticipation requires the presence in a single prior art reference disclosure each and every element of the claimed invention, *arranged as in the claim*." *Lindemann Maschinenfabrik GmbH v. American Hoist & Derrick Co.*, 221 U.S.P.Q. 481, 485 (Fed. Cir. 1984). Therefore, anticipation cannot be found in a situation where the claimed elements are arranged differently in the prior art. Furthermore, it is error to "treat the claims as a mere catalog of separate parts, in disregard of the part-to-part relationships set forth in the claims . . . that give the claims their meanings." *Id.* at 486.

According to the Examiner, Roe et al. discloses an absorbent article (20) having a front portion (42, 43), a back portion (32), and two side portions (30, 31), with the article comprising a first front elastic portion (42), a second rear elastic portion (34, 36), and a side elastic portion associated with each.

Applicant notes that the claims, as presently amended, require that the front portion and the back portion of the first and second elastic portions, respectively, have substantially equal depths. Antecedent support for this amendment is found in original claim 14. Applicant notes that the feature of claim 14 is not shown in the Roe et al. reference, and that original claim 14 has not been rejected over this reference. Applicant believes that claim 54 is now fully distinguished over the Roe et al. reference.

Claims 5-9, 11-15 and 20-26 stand rejected under 35 U.S.C. 102(e) as being anticipated by Turi et al. (U.S. Patent No. 6,413,249). This ground of rejection is traversed.

As an application of the legal requirements of anticipation, if the claim recites a device with a structure, the prior-art device must possess the same structure and not merely the functional characteristics of the claimed device. *See; e.g., In re Mills*, 16 U.S.P.Q.2d 1430, 1432 (Fed. Cir. 1990).

According to the Examiner, Turi et al. discloses an absorbent article (100) having a front portion, a back portion and two side portions. Furthermore, the elastic portions can be defined to have larger front and back areas than either of the side portions. Application respectfully disagrees with this interpretation, and submits that there is no evidence in Turi et al. to support this interpretation. Turi et al. clearly depicts absorbent articles having elastic portions wherein the side elastic portions are at least as large as, if not larger than, the front and back portions. See FIG. 2A of the reference.

Moreover, the reference depicts a total of four (4) elastic portions: two (2) first portions and two (2) second portions. As amended, the present claims require a single first elastic portion and a single second elastic portion. Antecedent support for this amendment is found, for instance, in present FIGS. 1 and 2.

Furthermore, there is no support for the proposition that the elastic portions can be defined to have any shapes other than the shapes specifically depicted, or that the elastic portions can have sizes other than those specifically depicted. In this regard, the reference clearly shows that the belts are of approximately uniform sizes, and the side portions are actually larger than the respective front and back portions.

In view of the aforementioned facts and reasons, the present application is now believed to overcome the remaining rejections in this application, and to be in proper condition for allowance. Entry of the foregoing amendment, at this time is appropriate since no further review or search is required. Accordingly, reconsideration and withdrawal of the rejections, is respectfully solicited. The Examiner is invited to contact the undersigned at the telephone number listed below to discuss any matter pertaining to the status of this application.

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